

REMARKS/ARGUMENTS

Status of Claims

Claims 1 to 4, 6 to 8, 12 to 14, 16 and 19 to 24 are pending in the application.

35 U.S.C. § 103 Claim Rejections

In rejecting claims under 35 U.S.C. § 103(a), the Examiner bears the initial burden of establishing a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992). *See also In re Piasecki*, 745 F.2d 1468, 1472 (Fed. Cir. 1984). It is incumbent upon the Examiner to establish a factual basis to support the legal conclusion of obviousness. *See In re Fine*, 837 F.2d, 1071, 1073 (Fed. Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17 (1966), viz., (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. Additionally, in making a rejection under 35 U.S.C. § 103(a) on the basis of obviousness, the Examiner must provide some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. *KSR Int'l. Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007). Only if this initial burden is met does the burden of coming forward with evidence or argument shift to the appellant. *See Oetiker*, 977 F.2d at 1445. *See also Piasecki*, 745 F.2d at 1472. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. *See Oetiker*, 977 F.2d at 1445; *Piasecki*, 745 F.2d at 1472.

Applicant's analysis below demonstrates that the Examiner has failed to fulfil the initial burden for a finding of obviousness under 35 U.S.C. 103.

Claims 1 to 3, 6 to 8, 12 to 14, 16 and 19 to 24 are all rejected under 35 U.S.C. 103(a) as being unpatentable having regard to Noel et al. (Noel), U.S. Publication No. 2005/0032539 in view of Zellner, U.S. Publication No. 2004/0125800.

Applicant submits that independent claims 1, 12, 21 and 24, and claims dependent upon them, are patentable over Noel and Zellner, as the Examiner has not properly determined the differences between the claimed invention and the prior art. Furthermore, the Examiner has not

provided a valid explanation to support an obviousness rejection under 35 U.S.C. 103. Applicant's reasoning is detailed below.

Differences between the claimed invention and the prior art

The following is a discussion of why the cited references do not disclose all the elements of the rejected claims. While it may be considered that "the mere existence of differences between prior art and an invention does not establish the invention's non-obviousness", Office personnel must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one skilled in the art (Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in view of the Supreme Court Decision in *KSR international Co. v. Teleflex Inc.*, published in Federal Register Vol. 72, No. 195, October 10, 2007). As such, if elements from a claim are not disclosed by the combination of cited references and no valid reasoning is provided why the missing elements would be obvious, this may provide a strong basis for why a claim should not be rejected based on obviousness.

At the top of page 5 of the current Office Action, the Examiner alleges that Noel discloses "the TCRM including a qualifier flag at least when the TCRM is forwarded to the second user device" in the form of a "priority level" that is assigned to each participant. Applicant respectfully submits that Noel discloses in paragraph [0021] that "the call originator assigns each participant a priority level. A priority level is a designation which indicates a participant's level of participation on a particular project. Each participant's priority level is then transmitted to the PTT server for storage until needed." In paragraph [0022] Noel discloses that the PTT server compares the assigned priority level of the call participant initiating the request with the assigned priority level of the current speaker. The PTT server then determines if the call participant making the request is placed in a queue based upon their priority level (if their priority is less than the current speaker) or if the call participant making the request is set to be the new speaker (if their priority is greater than the current speaker). In Noel there is no indication that the priority level is sent to the current speaker in a message, in a manner that would equate to "the TCRM including a qualifier flag at least when the TCRM is forwarded to the second user device", as alleged by the Examiner. In Noel the PTT server makes a decision and sets events in motion. There is no need or specific disclosure in Noel of sending the current

speaker a message that includes the priority level. Therefore, Applicant submits that Noel does not disclose the limitation that the Examiner alleges Noel discloses.

Furthermore, with respect to Noel, on page 3 of the Office Action the Examiner states that “it is not clear that the current speaker performs the “extended functionality” in response to a value of the qualifier flag”. Then, specifically with respect to the rejection of claims 1, 12 and 21 to 24, the Examiner concedes that Noel fails to specifically mention the second user device performing extended functionality in response to a value of a qualifier flag. The Examiner alleges that Zellner discloses this limitation. Applicant respectfully disagrees.

Firstly, Zellner does not disclose that the second user device “is in a transmitting in half-duplex (THD) mode for the active half-duplex session” as recited in claim 1. The element in Zellner that the Examiner is equating to the second user device as recited in claim 1 is node controller 120. Node controller 120 is part of switch 102. Switch 102 is on the Mobile 1 side of communication network 108. Switch 102 is not calling party 106, or even on the calling party side of communication network 108, which would at least be somewhat more analogous to a second user device as recited in claim 1. It is difficult to justify how switch 102, or more specifically a part of the switch, i.e. node controller 120, could be considered a second user device as recited in the present claims. Clearly, a user device as recited in the claims is a device that is used by a “user” in half duplex session. A user does not use the switch disclosed in Zellner in the manner a user uses a user device such as a cell phone or PDA, for example.

Secondly, Zellner discloses that node controller 120 queries database 122 to determine the priority of service for Mobile 1 based on Mobile 1’s profile and authorization information that was provided to the switch 102 when Mobile 1 first registered with the service provider. Claim 1 recites the network forwarding the TCRM message to the second user device and that message including a qualifier flag. There is no specific disclosure that Zellner discloses “the TCRM including a qualifier flag at least when the TCRM is forwarded to the second user device”. Applicant further submits that as database 122 and node controller 120 are collocated in switch 102, there is no message being forwarded by the network to a second user device that includes a qualifier flag.

Based on the above discussion, 1) neither of Noel or Zellner discloses the particular limitation of “the TCRM including a qualifier flag at least when the TCRM is forwarded to the second user device” and 2) Zellner cannot be considered to disclose the “second user device is in a transmitting in half-duplex (THD) mode for the active half-duplex session”.

For at least the reasons discussed above, Applicant respectfully submits that the combination of Noel and Zellner does not teach all the limitations recited in claims 1 and 12. Furthermore, the Examiner has failed to explain why the missing limitations would be obvious to one skilled in the art. Without all the limitations of claims 1 and 12 being disclosed by the two references and no reason provided by the Examiner why these missing limitations would be obvious, Applicant submits that there are differences between what is recited in amended claims 1 and 12 and what is disclosed in the cited art that renders the claims non-obvious.

Reason to Combine

Once the scope of the prior art is ascertained, the content of the prior art must be properly combined. An obviousness inquiry requires a review of a number of factors, including the background knowledge possessed by a person having ordinary skill in the art, to determine whether there was an apparent reason to combine the elements of the prior art in the fashion claimed by the present invention. For the Patent Office to combine references in support of an obviousness rejection, the Patent Office must identify a reason why a person of ordinary skill in the art would have combined the references *KSR Int’l v. Teleflex, Inc., No. 04-1350, slip op. at 14 (U.S., Apr. 30, 2007)*, Id. at 15. Even if the Patent Office is able to articulate and support a suggestion to combine the references, it is impermissible to pick and choose elements from the prior art while using the application as a template.

Applicant submits that there is no suggestion of a desirability of the claimed invention in the references that would serve as a reason for one skilled in the art to combine the references.

The Examiner’s motivation for combining Noel and Zellner is tied to a view that Noel and Zellner teach the particular limitations of claims 1 and 12. As detailed above in view of the claimed subject matter of claims 1 and 12, this is an incorrect interpretation of the references and as such this also affects the Examiner’s reason for combining the cited references.

The Examiner alleges that “[a]t the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the teachings of Noel with the teachings of Zellner to arrive at the claimed invention for improving cell management logic, improving wireless voice and data applications in communications networks”. Even if what is disclosed in Zellner were to be considered equivalent to the specific limitation of claims 1 and 12 to which it is being equated, which Applicant does not concede, Applicant submits that without a suitable reason, the combination of references is improper. There is no reason to combine Zellner with Noel. Zellner is concerned with the problem of how to use idle cell capacity in a communications system. This is unrelated to the problem of Noel of how a call originator can control who speaks in a half-duplex call.

The Examiner alleges that Zellner discloses performing extended functionality in response to a value of the qualifier flag. Even if Zellner did disclose this limitation, which Applicant does not concede, such an activity occurs between a mobile station (Mobile 1) and switch 102 to which the mobile station is connected. Switch 102, or node controller 120, which is a part of switch 102, is not the same as a (second) user device recited in present claims 1 and 12. The Examiner has failed to provide evidence why one skilled in the art would equate the switch or node controller, on the Mobile 1 side of the communication network in Zellner, with the mobile device of the participant who is currently speaking, as essentially recited in the present claims, and not the more logical choice of the PTT server in Noel, in the proposed combination of Noel and Zellner. Without evidence as to why one skilled in the art would make the choice to modify the system of Noel with the subject matter identified by the Examiner in Zellner in a manner that is opposed to the logical choice of modifying the PTT server as an intermediary node in the network, Applicant submits that the Examiner has failed to provide sufficient evidence for a suitable reason for combining the references.

The Examiner also suggests that Noel and Zellner are “in a similar field of endeavour”. Other than Noel and Zellner disclosing wireless communications, the Examiner has not provided sufficient evidence that the two references are in “a similar field of endeavour”. Applicant submits that Zellner is concerned with the problem of how to use idle cell capacity in a communications system. This is unrelated to the problem of Noel of how a call originator can control who speaks in a half-duplex call.

For at least the above reasons, Applicant submits that the Examiner has failed to provide a suitable reason for combining the references.

In view of the foregoing, Applicant submits that the Examiner has failed to establish a *prima facie* case of obviousness and that claims 1 and 12 of the present application is patentable over Noel and Zellner. Applicant respectfully requests the Examiner reconsider and withdraw the obviousness rejection of claims 1 and 12.

Claims 2, 3 and 6 to 8 depend from claim 1, either directly or indirectly. Claims 13, 14, 16, 19 to 20, 22 and 23 depend directly or indirectly from device claim 12. Claims 21 and 24 recite similar limitations to independent claims 1 and 12.

For at least the reasons discussed above concerning the rejection of claims 1 and 12, Applicant submits that claims 2, 3, 6 to 8, 13, 14, 16 and 19 to 24 patentably distinguish over the combination of Noel and Zellner.

The Examiner has rejected claim 4 under 35 U.S.C. 103(a) as being unpatentable over Noel and Zellner in view of Stubbs, U.S. Patent No. 6,930,994.


The Examiner points to Stubbs as teaching wherein the half-duplex session is a voice communication session compliant with at least one system selected from the group of iDEN.TM., 1XRTT CDMA, GSM/GPRS, UMTS, and TDMA. Claim 4 depends from claim 1. Even if Stubbs teaches what is alleged by the Examiner, Stubbs does not overcome the deficiencies of the combination of Noel and Zellner outlined above concerning the rejection of claim 1. Accordingly, the combination of Noel, Zellner and Stubbs does not render claim 4 obvious.

Applicant respectfully requests that the Examiner reconsider and withdraw the obviousness rejections of claims 1 to 4, 6 to 8, 12 to 14, 16 and 19 to 24

In view of the foregoing, early favorable consideration of this application is earnestly solicited. In the event that the Examiner has concerns regarding the present response, the Examiner is encouraged to contact the undersigned at the telephone number listed below.

Respectfully submitted,

RAO, KRISHINA ET AL.

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